FILED/ACCEPTED

Federal Communications Commission

Office of the Secretary

Before the **Federal Communications Commission** Washington, DC 20554

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ocket No. 07-197	

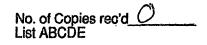
In the Matter of		EB Docket No. 07-197
)	
Kurtis J. Kintzel, Keanan Kintzel, and all)	File No. EB-06-IH-5037
Entities by which they do business before)	
the Federal Communications Commission)	FRN: 0007179054
)	
Resellers of Telecommunications Services)	NAL/Acct. No. 200732080029

REPLY TO OPPOSITION TO PETITION TO INTERVENE AS A PARTY BY THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

I. INTRODUCTION

On October 9, 2007, the National Association of State Utility Consumer Advocates ("NASUCA"), pursuant to 47 C.F.R. § 1.223(b), petitioned the Federal Communications Commission ("FCC" or "Commission") for leave to intervene as a party in the Show Cause hearing in this proceeding. On October 10, 2007, the Administrative Law Judge issued an Order setting October 22, 2007 as the deadline for the designated parties in this proceeding - Kurtis J. Kintzel and Keanan Kintzel ("Kintzels") and the FCC's Enforcement Bureau ("Bureau") – to file an opposition to and/or comments on

¹ NASUCA is a voluntary national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.



NASUCA's Petition. The Kintzels, through counsel, filed an opposition on October 16, 2007.² Pursuant to 47 C.F.R. § 1.45(c), NASUCA files this reply to the Kintzels' opposition.

The Kintzels' pleading is long on arguing the merits of the case and short on arguing against NASUCA's intervention in this proceeding. NASUCA's Petition demonstrated that NASUCA's participation, by including the perspective of consumers who have been harmed by the Kintzels' telecommunications businesses, including Buzz Telecom, Corporation ("Buzz"), will significantly assist the Commission in the determination of the issues identified in this proceeding.

The Kintzels' opposition asserts that (1) "NASUCA's Petition fails to cite any findings on the merits that ... customers were actually harmed, or that they were harmed by Buzz'" and that (2) "any evidence that NASUCA possesses can be obtained by the FCC through discovery; NASUCA's participation as a party is not necessary for that evidence to form part of the FCC's case." As discussed below, these assertions have no basis.

² The Opposition also addresses the two additional issues that NASUCA identified for consideration in this proceeding. Opposition at 4-5. Because the discussion of those issues is not crucial for NASUCA's intervention, NASUCA will not respond to that discussion in this Reply.

³ 47 C.F.R. § 1.45(c) provides that "[t]he person who filed the original pleading may reply to oppositions within 5 days after the time for filing oppositions has expired. The reply shall be limited to matters raised in the oppositions, and the response to all such matters shall be set forth in a single pleading; separate replies to individual oppositions shall not be filed." Under the October 10 Order, the time for filing oppositions to NASUCA's Petition expired on October 22, 2007. Because the fifth day after that date – October 27, 2007 – was a Saturday, NASUCA's reply is due October 29, 2007. See 47 C.F.R. § 1.4. It is NASUCA's understanding that the Bureau will file its comments today. A fair reading of 47 C.F.R. § 1.45(c) is that NASUCA should have until November 5, 2007 to respond to both the Kintzels' opposition and the Bureau's comments. However, in an abundance of caution, NASUCA files this reply to the Kintzels' opposition. NASUCA reserves the right to submit a reply to the Bureau's comments, if necessary.

⁴ Opposition at 2.

⁵ Id. at 4.

II. STATE PROCEEDINGS HAVE DETERMINED THAT BUZZ HARMED CONSUMERS.

Contrary to the Kintzels' assertions, the Ohio proceeding cited by NASUCA did make findings on the merits that Buzz harmed Ohio consumers. The Public Utilities

Commission of Ohio ("PUCO") found that Buzz had engaged in deceptive sales practices with 76 Ohio consumers and had slammed another 45 Ohio consumers. These consumers were harmed because they did not receive the service – including discounts – that they were promised and/or because their long distance service provider was changed without their authorization.

The fact that Buzz Telecom chose not to defend itself in Ohio does not diminish the gravity of the Ohio decision. PUCO rules require that corporations be represented by an attorney-at-law.⁸ Buzz understood this requirement, but claimed that "[w]ithout any financial resources, Buzz Telecom, Corporation simply has no ability to pay for legal council [sic] licensed in the state of Ohio." The fact that the Kintzels have obtained counsel for this FCC proceeding undermines Kurtis Kintzel's statement in the Ohio proceeding. The Kintzels' lack of counsel in the Ohio proceeding appears to have been a matter of choice.

⁶ In the Matter of the Commission Staff's Investigation into the Alleged Violations of the Minimum Telephone Service Standards by Buzz Telecom Corporation, PUCO Case No. 06-1443-TP-UNC, Opinion and Order (October 3, 2007) ("06-1443 Opinion and Order") at 16 (available at http://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A07J04B02449F48462).

⁷ See id. at 4-7, 9.

⁸ Ohio Adm. Code 4901-1-08(A) (available at http://codes.ohio.gov/oac/4901-1-08).

⁹ PUCO Case No. 06-1443-TP-UNC, Letter of Kurtis Kintzel (February 16, 2007) at 1 (available at http://dis.puc.state.oh.us/TiffToPDf/A1001001A07B16B20458F98826.pdf).

¹⁰ And although the PUCO's order, in striking Buzz's post-hearing brief, mentioned only the fact that the document had not been filed by legal counsel (See 06-1443 Opinion and Order at 3-4), it is also true that the document was submitted approximately six weeks after the deadline for filing post-hearing briefs in the Ohio proceeding and without a motion for leave to submit a late-filed pleading.

Similarly, in Iowa, after almost 300 consumer complaints against Buzz, the Office of Consumer Advocate ("OCA") of the Iowa Department of Justice, a NASUCA member, sought civil monetary penalties and other remedies pursuant to Iowa Code section 476.103, which prohibits slamming and cramming. By orders dated January 30 and March 13, 2007, the Iowa Utilities Board granted judgment by default against Buzz on 31 complaints and assessed civil monetary penalties in amounts totaling \$310,000. The orders also directed all telecommunications service providers in Iowa to stop billing charges to Iowa consumers on behalf of Buzz and to deny Buzz exchange access services. The orders stated, "[B]ecause the misrepresentations Buzz is alleged to have committed were so numerous and apparently directed at elderly Iowans, and because Buzz showed disregard for the Board's process by failing to answer those allegations, the Board finds the maximum penalty is warranted."

By further order dated April 20, 2007, the Board granted judgment by default against Buzz on an additional 258 complaints. This order stated, "At this point, it appears the most important relief the Board can grant is to prevent any future similar actions by Buzz. To that end, ... the prohibition on any service provider from billing charges to residents of Iowa on behalf of Buzz and the prohibition on certificated local exchange providers from providing exchange access service to Buzz, as provided in the Board's January 30, 2007 order in this docket, will remain in effect." They are orders on the merits.

¹¹ Office of Consumer Advocate v. Buzz Telecom, Corp., Docket No. FCU-06-55, Order (January 30, 2007) at 4 (available at http://www.state.ia.us/government/com/util/docs/orders/2007/0130_fcu0655_default.pdf); id., Order (March 13, 2007) at 4 (available at http://www.state.ia.us/government/com/util/docs/orders/2007/0313 fcu0655.pdf).

¹² Id., Order (April 20, 2007) at 4-5 (available at http://www.state.ia.us/government/com/util/docs/orders/2007/0420 fcu0655.pdf).

Other states have also issued decisions against Buzz. For example, the Georgia Public Service Commission found that Buzz had slammed 283 consumers and ordered Buzz to provide them with full refunds. Thus, despite the Kintzels' protestations, state commissions have found that Buzz harmed consumers.

Finally, Buzz states that "[i]f NASUCA wants to assert the rights of customers 'who have been harmed by Buzz,' it must first obtain findings on the merits that the customers were actually harmed, and that they were harmed by Buzz." Buzz cites no authority for this proposition. As just noted, there have been such findings at the state level. More importantly, whether customers have been harmed is a key concern of this proceeding. Allowing NASUCA to participate at this point is no more "an assumption of [Buzz's] guilt" than is the very existence of this proceeding. Whether or not NASUCA participates, Buzz will have every opportunity to defend itself on all issues in this proceeding, just as it had (but chose not to) at the state level.

This Commission has found good cause for intervention when an applicant shows "knowledge of specific facts or other information bearing directly on the designated issues..." By virtue of its presence and activity in the states, NASUCA has shown it has such knowledge here.

¹³ In the Matter of Buzz Telecom, Business Options, Inc., UMCC Holdings, Inc. and Ultimate Medium Communications Corporation: Allegation of Violation(s) of Georgia Public Service Commission Rules and The Telecommunications Marketing Act of 1998, Georgia PSC Docket No. 15968-U, Order (April 3, 2007) (available at ftp://www.psc.state.ga.us/Dockets/15968/101218.doc).

¹⁴ Opposition at 2.

¹⁵ Td.

¹⁶ In the Matter of AT&T Proposed Tariff Revisions, 54 F.C.C.2d 794 (1975).

III. THE BEST WAY FOR NASUCA TO PRESENT EVIDENCE IS AS A PARTY TO THIS PROCEEDING.

The Kintzels' reliance on the Commission's discovery process as a means for the Bureau to present NASUCA's evidence¹⁷ is baseless. Under the Commission's discovery rules, discovery requests may be made only by "[a] <u>party</u> to a Commission proceeding" upon "any other <u>party</u> except the Commission…"¹⁸ Thus, unless NASUCA is a party to the proceeding, NASUCA would not be subject to the Commission's discovery rules.

NASUCA should be allowed to present its own evidence in this proceeding, independent of any evidence developed by the Bureau. NASUCA's members have statutory directives in their respective states to protect the consumers of those various states. NASUCA's active participation in this proceeding furthers those statutory directives. Finally, NASUCA's active participation as a party in this proceeding also furthers the Commission's statutory charge to investigate the practices, charges, etc. of common carriers subject to its jurisdiction in order to ensure that such practices, charges, etc. are just and reasonable.

IV. CONCLUSION

The Kintzels present no sound reasons for opposing NASUCA's intervention in this proceeding. Accordingly, for the reasons set forth herein and in NASUCA's Petition, the Commission should grant NASUCA leave to intervene in this proceeding.

¹⁷ Opposition at 4.

¹⁸ 47 C.F.R. § 1.325(a) (emphasis added).

Respectfully submitted,

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October 29, 2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply to Opposition to Petition for Leave to Intervene by the National Association of State Utility Consumer Advocates was provided to the persons listed below by overnight delivery this 29th day of October 2007.

David C. Bergmann Assistant Consumers' Counsel

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A copy was also faxed to the Office of Administrative Law Judges at (202) 418-0195.